

1 Larry A. Hammond, 004049
2 Anne M. Chapman, 025965
3 OSBORN MALEDON, P.A.
4 2929 N. Central Avenue, 21st Floor
5 Phoenix, Arizona 85012-2793
6 (602) 640-9000
7 lhammond@omlaw.com
8 achapman@omlaw.com

9 John M. Sears, 005617
10 P.O. Box 4080
11 Prescott, Arizona 86302
12 (928) 778-5208
13 John.Sears@azbar.org

14 Attorneys for Defendant

15 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
16 IN AND FOR THE COUNTY OF YAVAPAI

17 STATE OF ARIZONA,

18 Plaintiff,

19 vs.

20 STEVEN CARROLL DEMOCKER,

21 Defendant.

) No. P1300CR20081339

) Div. 6

) **DEFENDANT'S RESPONSE TO**
) **STATE'S MOTION FOR**
) **SANCTIONS**

) **UNDER SEAL**

22 Steven DeMocker, by and through counsel, hereby responds to the State's
23 Motion for Sanctions. A plain reading of Arizona Rule of Criminal Procedure 15.2
24 makes clear that the State's motion is frivolous and yet a further attempt to excuse its
25 own due diligence failures by falsely accusing the defense. The Motion should be
26 denied.

The State's Motion, on its face, makes it clear that Arizona Rule of Criminal Procedure 15.2(c)(3) does not apply to the information relating to the disclaimer and payout of insurance benefits to Katie and Charlotte DeMocker. Furthermore, it was the State's own misrepresentation of the known facts relating to Mr. DeMocker's disclaimer that even cause the issue to be raised by the defense at trial. Lastly, the State was well aware, based on its own disclosures, that Mr. DeMocker was seeking to disclaim his benefits. The only reason the State was not aware of the details was based on its own failure to exercise due diligence.

1. The Defense Does Not Intend to Use Any Documents Subject to Rule 15.2 (c) (3) Regarding the Disclaimer and Payout of Hartford Insurance Benefits, as Was Made Clear In Mr. Sears' Opening

Arizona Rule of Criminal Procedure 15.2 (c)(3) provides for defense disclosure only if the “defendant intends to use [the papers documents, and other tangible objects] at trial.”

Mr. Sears' opening made clear that in responding to the State's misrepresentations about Mr. DeMocker' seeking the proceeds of the insurance policies, that the evidence would come directly from Katie and Charlotte DeMocker when he told the jury that "You will hear from Katie and Charlotte" The defense did not tell the jury, and does not plan to present to the jury, any documents relating to the disclaimer or payment of benefits. The State knows this because when it late disclosed these documents, the defense moved to preclude the documents based on Rule 15.6. It is preposterous for the State to move for sanctions on the theory that the defense plans to use documents at trial that the defense previously moved to preclude based on late disclosure.

1 Katie and Charlotte DeMocker were timely disclosed as witnesses. Any limited
2 relevant evidence about this issue will come directly from them, as was obvious from
3 Mr. Sears' opening.
4

5 **2. The State's Misleading Statement to the Jury Was the Only Reason the**
6 **Issue Was Raised and Corrected by the Defense Opening Statement**

7 The defense had no reason to believe, prior to the State's opening, that it would
8 claim, contrary to the evidence in its possession since 2008, that Mr. DeMocker made a
9 claim for the Hartford Insurance benefits without also telling the jury that he
10 immediately advised Hartford that he intended to disclaim any right to the money so
11 that it could be paid to his daughters.. Once that misrepresentation was made to the
12 jury, Mr. Sears corrected it by properly clarifying that Mr. DeMocker did disclaim his
13 benefits and those benefits were paid to his daughters.

14 The State, in its opening, made the following statement:

15 "The evidence will show that at the time of her death, Carol Kennedy's
16 death, her murder, that Steven DeMocker was the owner and beneficiary
17 of two life insurance policies on the life of Carol Kennedy. The total
18 value of those life insurance policies was \$750,000. One was \$500,000,
the other was \$250,000. And the evidence will show that he made a claim
for those benefits on August 20th of the year 2008."

19 The State knew that this recitation—that there would be evidence that Mr.
20 DeMocker made a claim for \$750,000 on August 20, 2008—was designed to
21 mislead the jury and if accepted would have caused the jury to accept as true a
22 false understanding of the facts. The State had in its possession an email from
23 Steve DeMocker, dated September 3, 2008, to Hartford Life Insurance stating
24 that "[t]o repeat the position I described to you when we first spoke on the phone,
25 I do not wish to receive the death benefit from either policy. Instead, as you
26 know, I'm trying to determine if there is a way to disclaim the proceeds to our
27 daughters, or failing that, to determine the most tax-efficient way of gifting the
28

1 money to them for their sole benefit.” From the outset—well before he was
2 charged, but after he knew he was a suspect—Mr. DeMocker was trying to find a
3 way to make it clear that he was NOT making a “claim for those benefits.” That
4 is precisely what he was telling the Hartford Insurance Company on August 20,
5 2008.

6 The State has had this email since November of 2008. The statement in
7 the State’s opening that Mr. DeMocker had made a claim for these benefits,
8 without mention of this email or the facts therein, was false and misleading.

9 Mr. Sears’ response--in the defense Opening Statement--that Mr.
10 DeMocker had disclaimed his interest in the Hartford policies and the benefits
11 had been paid to his daughters was both factually correct and a necessary
12 correction of the account given by the State to the jury.

13
14 **3. The Information Regarding the Details of the Disclaimer and Insurance**
15 **Benefits Payment to Katie and Charlotte DeMocker Is Not Relevant**

16 That Mr. DeMocker’s daughters chose to use insurance proceeds to assist the
17 defense of their wrongfully accused father has no bearing on the fact that Mr.
18 DeMocker disclaimed his interest. The State continues to make unsupported,
19 unfounded accusations about Mr. DeMocker’ alleged control of the money that was
20 distributed to his daughters (page 2 of the State’s Motion for Sanctions) and about how
21 and why Mr. DeMocker’s daughters chose to use their money to support his defense.
22 There is no evidence, and none has been presented to the Court, to support these
23 allegations. There was no secret that Mr. DeMocker was seeking to disclaim these
24 benefits and have these proceeds paid out to Katie and Charlotte DeMocker. The State
25 had the documents in 2008 from Mr. DeMocker himself informing Hartford of his
26 intentions.

1 The State continues to make unsupported, irrelevant and misleading statements
2 to this Court about the process and propriety of what occurred in the Probate Court. The
3 insurance proceeds were not required to be processed through the Probate Court, nor
4 was the Probate Judge required to bless appointee Renee Girard as successor trustee.
5 There was also no need to petition the Probate Court for permission to modify the terms
6 and conditions of the trust for the girls to distribute the money as they saw fit. There is
7 nothing in the record, other than the State's wild and unsupported accusations, to
8 suggest that these issues were required to go through the Probate Court. All of this was
9 done with the assistance of independent counsel from a trust and estates expert, Chris
10 Kotkee. The State has presented no law, no expert, and no finding from the Probate
11 Court that anything that occurred was improper. On information and belief the Probate
12 Court has issued an order summarily disposing of the State's filing in the Probate Court.
13 Counsel request that this Court inquire of Judge Mackey the substance of that order.
14

15 **4. The State Was Well Aware of Mr. DeMocker's Ongoing Attempts to**
16 **Disclaim the Insurance Benefits**

17 The State also falsely claims that it was unaware of Mr. DeMocker's disclaimer
18 until Mr. Sears' opening statement. (Motion at 3-4). The State's own disclosures
19 includes an August 20, 2008 email from Mr. DeMocker to Hartford that he was seeking
20 to disclaim his benefits. The state has also had in its possession since 2008, a recording
21 of a telephone call to Hartford in which it was asserted that Mr. DeMocker was trying to
22 find out how to make sure his daughters received the insurance proceeds. (Evidence
23 Item 47, transcript attached).

24 The State, after first falsely stating to the Court that Hartford had lied to the State
25 about payment of benefits, is now falsely asserting that it is somehow the fault of Mr.
26 DeMocker that the State did not exercise due diligence in its investigation. The State
27 had this information and did nothing with it, despite frequent contact with Hartford,
28

1 including noticing Hartford officials as state's witnesses. The State now wants to excuse
2 its failures and get around the requirements of Rule 15.6. The Court should deny the
3 State's attempts to so circumvent the Rules and its own obligations.

4 CONCLUSION

5 The State's motion is frivolous on its face. There is no basis for imposing
6 sanctions where the defense was required to correct the misstatements of the State
7 during openings and planned to use witnesses who were disclosed very early in this case
8 which came as no surprise to the State. The State is yet again attempting to blame
9 someone else for its own incompetence in exercising the due diligence required under
10 Rule 15.6 to admit late disclosure. When the Court caught the State in its last dishonest
11 attempt to avoid its due diligence obligation by falsely blaming Hartford, the State
12 began to look for another target. The State's continued desperation, failure to
13 acknowledge its own failures of due diligence, and creation of this situation in the first
14 instance by their own false and misleading statements to the jury are what are
15 sanctionable. The State's motion should be denied and this Court should consider
16 appropriate sanctions against the State to the extent they are permitted by law.
17

18 DATED this 16th day of July, 2010.

19
20 By: 

John M. Sears
P.O. Box 4080
Prescott, Arizona 86302

23 OSBORN MALEDON, P.A.
24 Larry A. Hammond
Anne M. Chapman
25 2929 N. Central Avenue, Suite 2100
26 Phoenix, Arizona 85012-2793

27 Attorneys for Defendant

1
2 **ORIGINAL** of the foregoing hand delivered for
3 filing this 16th day of July, 2010, with:

4 Jeanne Hicks
5 Clerk of the Court
6 Yavapai County Superior Court
7 120 S. Cortez
8 Prescott, AZ 86303

8
9 **COPIES** of the foregoing hand delivered this
10 this 16th day of July, 2010, to:

11 The Hon. Warren R. Darrow
12 Judge Pro Tem B
13 120 S. Cortez
14 Prescott, AZ 86303

15 Joseph C. Butner, Esq.
16 Jeffrey Paupore, Esq.

17 Prescott Courthouse basket

18
19 
20 3210831
21
22
23
24
25
26
27
28

1 Steven DeMocker CR 2008-1339 DATE: UNKNOWN
2 INTERVIEWER: MIKE INTERVIEWEE: CINDY WOODRING
3 START TIME: UNKNOWN LOCATION: UNKNOWN
4 RECORDING FILE NAME: ITEM 47 - [REDACTED]

5 MIKE: Thanks for calling the Hartford. This is Mike.
6 How can help you?
7 MS. WOODRING: Yes, Mike. My name is Cindy Woodring, and I am
8 calling about Policy Number [REDACTED] I have a
9 death claim to report, actually.
10 MIKE: Okay. Just one moment, please.
11 MS. WOODRING: Okay.
12 MIKE: Okay. It will just be one more moment. I
13 apologize. It's in a different system and I
14 didn't realize.
15 MS. WOODRING: Okay.
16 MIKE: Okay. And, Cindy, what was your name again?
17 Cindy?
18 MS. WOODRING: Woodring, and I work in the office of both the
19 owner of the policy, as well as the agent,
20 Steven DeMocker.
21 MIKE: Oh, okay.
22 MS. WOODRING: They're actually --
23 MIKE: And can you give me -- do you have Steven's last
24 four of his social?
25 MS. WOODRING: Yeah. Hang on just one minute, okay?
26 MIKE: Okay.
27 MS. WOODRING: Okay.
28 (Audio played while on hold)

1 MS. WOODRING: Okay. Sorry about that.
2 MIKE: No problem.
3 MS. WOODRING: [REDACTED]
4 MIKE: Okay. Very good. Okay. And you're the agent's
5 assistant.
6 MS. WOODRING: That's correct.
7 MIKE: Okay. And date of death?
8 MS. WOODRING: Is 7/2/08.
9 MIKE: Okay. Cause of death?
10 MS. WOODRING: It was a homicide.
11 MIKE: Okay.
12 MS. WOODRING: Okay. And there's also another policy for her.
13 It's [REDACTED]
14 MIKE: Okay.
15 MS. WOODRING: Okay.
16 MIKE: Just one more moment.
17 MS. WOODRING: All right.
18 MIKE: A few more questions.
19 MS. WOODRING: Okay.
20 MIKE: Surviving spouse?
21 MS. WOODRING: Actually, they were divorced prior to her death.
22 MIKE: Oh, okay.
23 MS. WOODRING: Steve was no longer married to her at the time
24 of death.
25 MIKE: So no. Okay. Beneficiary?
26 MS. WOODRING: Is Steven DeMocker.
27 MIKE: Okay.
28 MS. WOODRING: And he's also -- he also owns these policies.

AVTranz

E-Reporting and E-Transcription
Phoenix (602) 263-0885 • Tucson (520) 403-8024
Denver (303) 634-2295

1 MIKE: Yep.

2 MS. WOODRING: Okay. Now what he wanted to do really is -- he

3 doesn't want the death benefit of the policies.

4 He wants it to go to his daughters.

5 MIKE: Okay. Well, that -- that's something you can

6 take care of on the claims end.

7 MS. WOODRING: Okay.

8 MIKE: I'm just -- basically what I'm going to do is

9 forward this to the claim's department.

10 MS. WOODRING: Okay.

11 MIKE: Okay. And the forms should be sent to you?

12 MS. WOODRING: Yes.

13 MIKE: Okay. They can be faxed, e-mailed, as well as

14 mailed.

15 MS. WOODRING: E-mailed would be wonderful.

16 MIKE: Okay. Just one moment, please.

17 MS. WOODRING: Okay.

18 MIKE: Okay. First I need your phone number, please.

19 MS. WOODRING: Okay. My phone number is 800-247-1754.

20 MIKE: Okay.

21 MS. WOODRING: And my extension is 5120.

22 MIKE: Okay. And e-mail address, please.

23 MS. WOODRING: Email address is Cynthia, C-Y-N-T-H-I-A, dot,

24 Woodring, W-O-O-D-R-I-N-G --

25 MIKE: Okay.

26 MS. WOODRING: -- at UBS, as in Sam, dot com.

27 MIKE: Okay. And that's Cynthia -- first I'm going to

28 repeat the phone number. 800-247-1754,

AVTranz

E-Reporting and E-Transcription
Phoenix (602) 263-0885 • Tucson (520) 403-8024
Denver (303) 634-2295

IV002747

1 extension 5120. And that's
2 Cynthia.Woodring@UBS.com.
3 MS. WOODRING: Correct.
4 MIKE: Okay. Now, all right, I have that information.
5 Just one moment. Okay. So also for Policy
6 Number [REDACTED]
7 MS. WOODRING: Correct.
8 MIKE: Okay. All right. Okay. I will forward these
9 to our claim's department, and within 48 hours
10 they will email you those forms.
11 MS. WOODRING: Okay. Wonderful.
12 MIKE: Okay.
13 MS. WOODRING: I have one more question for you.
14 MIKE: Yes, ma'am.
15 MS. WOODRING: There is a policy number, [REDACTED] --
16 MIKE: Okay.
17 MS. WOODRING: -- Steven DeMocker is the insured on that
18 policy, but Carol DeMocker, the deceased, is the
19 owner.
20 MIKE: Okay.
21 MS. WOODRING: So we need to change ownership of that policy.
22 MIKE: Okay.
23 MS. WOODRING: Death certificate will be required to do that,
24 too, probably.
25 MIKE: Yeah.
26 MS. WOODRING: Yeah.
27 MIKE: That will be a deceased owner. Okay.
28 MS. WOODRING: All right.

1 MIKE: All right. Here's what I'm going to do: I will
2 -- that will be a deceased owner, and I'm going
3 to put in a work order for that.
4 MS. WOODRING: Okay.
5 MIKE: Okay.
6 MS. WOODRING: All right.
7 MIKE: All right. We'll take care of this, then.
8 MS. WOODRING: Okay. Thank you so much.
9 MIKE: Anything else?
10 MS. WOODRING: No, that's all.
11 MIKE: Great. Thank you.
12 MS. WOODRING: Okay. Bye-bye.
13 MIKE: Bye.

14 (Recording Concludes)

15

16

17

18

19

20

21

22

23

24

25

26

27

28